

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2008-1336

HEATHER RENEE SANTOS
P.O. Box 741
Burney, CA 96013

OAH No. 2011020940

Applicant for Vocational Nurse License

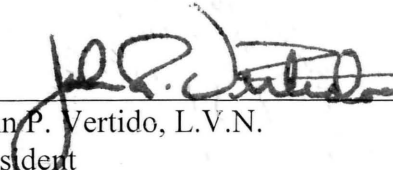
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on August 18, 2011.

IT IS SO ORDERED this 19th day of July, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

HEATHER RENEE SANTOS,

Burney, CA 96013

Respondent.

Case No. VN-2008-1336

OAH No. 2011020940

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on April 21, 2011.

Jeffrey M. Phillips, Deputy Attorney General, represented complainant, Teresa Bello-Jones, J.D., M.S.N., R. N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

Respondent Heather Renee Santos represented herself.

Evidence was received, the record was closed, and the matter was submitted on April 21, 2011.

SUMMARY

Complainant seeks to deny respondent's application for a vocational nurse license on the grounds that respondent has: 1) multiple criminal convictions; 2) possessed a controlled substance on multiple occasions; 3) used a controlled substance or consumed an alcoholic beverage in a manner or to an extent that is dangerous to herself or others on multiple occasions; and 4) multiple convictions involving the possession or use of a controlled substance or alcoholic beverage. The evidence establishes cause to deny the application. However, the evidence also demonstrates that respondent has sufficiently rehabilitated herself such that she will not pose a danger to the public if she is issued a license on a probationary basis.

Therefore, respondent's application for a vocational nurse license should be granted on the terms specified in the Order below.

FACTUAL FINDINGS

1. On or about October 24, 2008, the Board received an application for a vocational nurse license from respondent. The Board denied the application on or about March 23, 2010, and respondent timely appealed the denial. On or about August 24, 2010, complainant, acting solely in her official capacity, filed a Statement of Issues setting this matter for hearing.

Criminal Convictions

2. On November 10, 1997, respondent pled guilty to, and was convicted of, misdemeanor violations of Health and Safety Code sections 11377, subdivision (a), possession of a controlled substance (methamphetamine), and 11550, subdivision (a), being under the influence of a controlled substance (methamphetamine), in the Superior Court of the State of California, in and for the County of Shasta, Case No. 97-8125. Entry of judgment was deferred pursuant to Proposition 36 to allow respondent to enroll in and complete a drug treatment program. On December 14, 1999, respondent was sentenced to three years informal probation, 15 days in the county jail, and to pay \$370 in fines. That sentence was suspended pending her completion of the drug treatment program. She ultimately completed the program, was allowed to withdraw her guilty plea and enter a new plea of not guilty, and the charges were dismissed.¹

¹ There is a conflict amongst the appellate courts as to when a defendant is deemed "convicted" for purposes of Proposition 36. (See, *People v. Mendoza* (2003) 106 Cal.App.4th 1030, 1034 ["This language contemplates that to be 'convicted' a defendant need not be sentenced, because it is only once a defendant has been convicted – meaning adjudicated guilty by verdict or plea – that the defendant, if eligible, is *then* given the sentence of probation."]; cf, *In re Janet DeLong* (2001) 93 Cal.App.4th 562, 570 ["We therefore conclude 'convicted' within the meaning of section 1210.1 means adjudication of guilt *and* judgment thereon."]) The Third District Court of Appeal has not decided the issue. (*Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 404 fn. 2 [recognizing the conflict amongst the appellate courts but concluding that such conflict was irrelevant to the determination of the issues being considered].) Here, the conflict is equally irrelevant in light of Business and Profession Code sections 480, subdivision (a)(1), and 490, subdivision (c), both of which define "conviction" as "a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . ."

3. The facts and circumstances of the conviction arose out of respondent and her two friends' request for assistance from the Redding Police Department on November 7, 1997. When officers arrived at respondent's apartment, she and her friends stated that they had heard noises in the attic and asked the officers to investigate. The officers inspected the attic and found nothing. However, respondent and her two friends were showing objective signs of being under the influence of methamphetamine. The officers also found methamphetamine and drug paraphernalia lying around the apartment. Respondent and her friends admitted to having consumed methamphetamine and all three were arrested.

4. On December 14, 1999, respondent pled guilty to, and was convicted of, a misdemeanor violation of Health and Safety Code section 11377, subdivision (a), possession of a controlled substance (methamphetamine), in the Superior Court of the State of California, in and for the County of Shasta, Case No. 99-8705. Imposition of sentence was suspended, and respondent was placed on probation for three years. She was ordered to spend 15 days in county jail and pay \$613 in fines. However, the sentence was stayed pursuant to Proposition 36 pending her enrollment in and completion of a drug treatment program. She ultimately completed the program, was allowed to withdraw her guilty plea and enter a new plea of not guilty, and the charges were dismissed.

5. The facts and circumstances of the conviction arose out of a traffic stop by an officer from the Redding Police Department on October 20, 1999, because respondent was driving a car with an expired registration. During the stop, respondent admitted to being on probation for drug related offenses. She also admitted to having methamphetamine and drug paraphernalia in her car.

6. On March 10, 2000, respondent pled guilty to, and was convicted of, a misdemeanor violation of Health and Safety Code section 11364, possession of an injecting/smoking device, in the Superior Court of the State of California, in and for the County of Shasta, Case No. 00-113. Imposition of sentence was suspended, and respondent was placed on probation for three years. She was ordered to spend 15 days in county jail and to pay \$538 in fines and fees.

7. The factual basis for the conviction arose out of an investigative stop by the Redding Police Department on November 26, 1999. An officer saw respondent using a pay telephone in an area known for heavy drug trafficking and drug use and asked if respondent was on probation. When asked if she had any illegal contraband, respondent produced a glass smoking pipe.

8. On March 10, 2000, respondent pled guilty to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a vehicle with an blood-alcohol content of .08 percent or greater, in the Superior Court of the State of California, in and for the County of Shasta, Case No. 00-1685. Imposition of sentence was suspended, and respondent was placed on probation for

three years. She was ordered to spend 48 hours in county jail, pay \$1,623 in fines and fees, and enroll in and complete a Level I alcohol treatment program. Her driving privilege was restricted for three months.

9. The facts and circumstances of the conviction arose out of respondent's involvement in a single car collision on January 29, 2000. The Redding Police Department responded to the accident scene and found a large telephone pole with fresh damage on it and a silver Toyota registered in respondent's name with major damage to its right front side. Paramedics were in the process of removing respondent from the Toyota. Officers spoke with two witnesses at the scene who said they saw respondent drive past them at a high rate of speed just before the accident. They lost sight of respondent when she turned the corner. Shortly afterwards, they heard a loud crash. The witnesses ran towards the area they heard the sound come from and found the collision. An officer spoke with respondent at the hospital and noticed that respondent was exhibiting objective signs of being under the influence of alcohol. He told respondent that she was being arrested for drunk driving. The officer returned when respondent was ready to be released from the hospital, and respondent stated, "I was driving and I was under the influence." Her blood-alcohol content measured .12 percent.

10. On November 13, 2000, respondent pled guilty to, and was convicted of, a misdemeanor violation of Vehicle Code section 12500, driving without a valid driver's license, in the Superior Court of the State of California, in and for the County of Shasta, Case No. 00-8987. Respondent was ordered to pay \$370 in fines.

11. On October 10, 2003, respondent pled guilty to, and was convicted of, a misdemeanor violation of Health and Safety Code section 11364, possession of an injecting/smoking device, in the Superior Court of the State of California, in and for the County of Shasta, Case No. 03-6300. Imposition of sentence was suspended, and respondent was placed on probation for three years. She was ordered to spend five days in county jail, but the order was suspended pending drug test results. She was ordered to return on November 14, 2003, for determination of her jail sentence.² Respondent was also ordered to pay \$533 in fines and fees, \$128 of which was suspended.

12. The facts and circumstances of the conviction arose out of respondent's arrest on August 14, 2003, for having a pipe used for smoking methamphetamine in her possession.

13. On May 2, 2008, respondent pled nolo contendere to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood-alcohol content of .08 percent or greater, in the Superior Court of the State of California, in and for the County of Shasta, Case No.

² No court records showing respondent's final jail sentence were provided.

08-0998. Respondent admitted her prior drunk driving conviction. Imposition of sentence was suspended, and respondent was placed on probation for five years. She was ordered to spend 45 days in county jail, pay \$2,362 in fines and fees, and enroll in and complete a parenting class. She was also ordered to enroll in and complete an 18-month drunk driving program and not to drive any vehicle that did not have an ignition interlock device installed for three years.

14. The facts and circumstances of the conviction arose out of a traffic stop by a California Highway Patrol Officer on December 31, 2007. Respondent was stopped for speeding and swerving just before she was about to hit a telephone pole. Her three-year-old son was with her in the car. When the officer approached respondent's car, he noticed that respondent was exhibiting objective signs of intoxication. Respondent's blood-alcohol content measured .11/.10 percent.

Factors in Aggravation, Mitigation, and Rehabilitation

15. Respondent is 34 years old. She married Larry Zander on May 1, 2010. She has a seven-year-old son from a prior relationship, a five-and-one-half-month-old son with Mr. Zander, and a stepdaughter with Mr. Zander.

16. Respondent testified candidly about her past drug abuse and most recent drunk driving conviction. She grew up in Burney, California, an unincorporated city that is approximately 50 miles northeast of Redding. When she was 17 years old, she moved in with an aunt in Redding. She immediately faced the culture shock of being in a "big city" for the first time in her life, and she found herself interested in the "bad" kids. When she turned 18 years old, she began dating a boy whose lifestyle involved drugs and violence. Having never been exposed to that lifestyle, she was fascinated with him and thought she could "change" him. She lived this chaotic lifestyle for almost one year without using methamphetamine, but instantly became addicted when she tried it for the first time. Her boyfriend became emotionally and physically abusive. As the abuse progressed, so did her addiction to methamphetamine. During this period, she slowly isolated herself from her family to the point that she had very little contact with them. She was eventually able to break free from the abusive relationship in July 2003 and has not seen her ex-boyfriend since then. He is not the father of any of respondent's children, and she has no ties to him.

17. Respondent began her relationship with her oldest son's father shortly after her relationship ended with her previous boyfriend in July 2003. Initially, her oldest son's father did not use drugs but had several friends who did. Eventually, both respondent and her oldest son's father began using methamphetamine together. However, she took a home pregnancy test in October 2003 and learned that she was pregnant. She reflected upon the fact that she had someone growing inside of her and that she wanted her baby to have a better life than other children who she had seen taken away from their parents because of drug abuse. The day that respondent

learned she was pregnant was the last time she used methamphetamine. Her oldest son's father is now in prison for drug-related offenses, and she has no contact with him.

18. Respondent testified that her May 2008 drunk driving conviction was "a huge mistake" on her part. She had decided to take her oldest son bowling on New Year's Eve 2007.³ Before going bowling, she and her son ate dinner with friends. Respondent had a glass of wine with dinner. She had another at the bowling alley. Since those two glasses of wine was the only alcohol she consumed that night and she did not feel the effects of the alcohol, she felt she was not under the influence and that it was safe for her to drive home. While driving home, she dropped her cell phone and reached to pick it up. That was when the California Highway Patrol officer saw her car swerve. She later learned in her 18-month drunk driving program that wine generally has a greater alcohol content than beer and her two glasses of wine were roughly the equivalent of four glasses of beer. She concluded that she could never again drink any kind of alcohol and has abstained from all alcohol since New Year's Eve 2007.⁴

19. Respondent has several support mechanisms in place to help her avoid relapsing back to her former addictive behavior. The last drug treatment program she completed taught her the behavior to watch for as an indicator of a potential relapse. Once she recognizes that behavior, she has learned to immediately call her "sponsor" to help her avoid any activities which might lead her back to using methamphetamine or consuming alcohol. She has had the same sponsor since she began attending Narcotics Anonymous (NA) meetings in 2004. She continues to attend those meetings on a weekly basis.

20. Respondent also relies heavily on her faith in God to help her avoid methamphetamine and alcohol. She became active in her church in 2004. She participated with her then-boyfriend (now husband) in a bible study group which consisted of four other young married couples. They learned about living an

³ She also testified that she had been "clean" from drugs for almost eight years by that date. But she was convicted of possession of a methamphetamine pipe five years prior. (Factual Finding 11.) This discrepancy in her testimony does not substantially impair her credibility in light of the independent evidence of her accomplishments since 2004, behavior which is inconsistent with that of a person who is still using methamphetamine. (See, Factual Findings 22, 23, 25, and 27.)

⁴ According to the Arrest-Investigation Report completed by the California Highway Patrol officer on New Year's Eve 2007, respondent said she had two glasses of beer. But the Arrest-Investigation Report was admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, and the officer was not available for cross-examination. Furthermore, respondent's testimony belies any conclusion that she lied at the hearing because she admitted that she knows that wine has a greater alcohol content than beer.

authentic Christian life. She has maintained relationships with the other couples after the bible study ended and relies on them as part of her support network to keep her away from methamphetamine and alcohol.

21. Respondent relies on her family to help keep her away from methamphetamine and alcohol as well. Her husband, whom she describes as her “rock,” does not use any controlled substances or consume alcohol. She is involved in 4-H, baseball, and Girl Scouts with her older son and stepdaughter.

22. Respondent enrolled in Lake College in Redding, California on June 18, 2007; completed her prerequisite program on September 28, 2007, with a cumulative grade point average (g.p.a.) of 3.79; enrolled in the Vocational Nursing Program at Lake College on October 27, 2007; and completed that Program on October 13, 2008, with a cumulative g.p.a. of 3.14.

23. After completing her last drug treatment program in 2003, respondent began volunteering at different medical facilities. She volunteered at Mayers Crossroads Clinic, a substance abuse treatment facility, from 2004 to 2005. In 2004 she also began volunteering at the long-term care skilled nursing facility at Mayers Memorial Hospital in Burney, California. She continues to volunteer there to this day. She plays Bingo with the patients, helps the accounting department with paying the bills, and performs other tasks as needed. She has a job offer for a licensed vocational nurse position at that facility, pending receipt of her license.

24. Respondent submitted 24 character reference letters, each of which was admitted into evidence as administrative hearsay pursuant to Government Code section 11513, subdivision (d). Most of the authors are either respondent’s relatives or do not evince a complete understanding of her criminal history and, therefore, are given little weight. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 [“If the character witnesses were not aware of the extent and seriousness of petitioner’s criminal activities, their evaluations of his character carry less weight.”]) However, three people who wrote letters are aware of her history, and their letters are discussed below.

25. Tom Watson, M.D., is the Medical Director for Mountain Valleys Health Centers, Inc. (MVHC), a community health center organization that provides health and dental care to several rural communities in Northeastern California. He has known respondent for over 15 years as a patient, an employee, and a volunteer.⁵ Dr. Watson is well aware of her past history of drug abuse and her two drunk driving convictions. Respondent sought advice from Dr. Watson when she first learned she was pregnant in October 2003 and was worried whether her methamphetamine use

⁵ Dr. Watson was on the medical staff of Mayers Crossroads Clinic when respondent was a volunteer, and he currently is on the medical staff of Mayers Memorial Hospital where she currently volunteers.

had harmed the fetus. He delivered a healthy baby boy on May 10, 2004. He employed her as a nursing assistant and then as a medical assistant from October 2006 until June 2007. During her employment, she was entrusted with the keys to the medicine cabinet and had unfettered access to numerous controlled substances. Not once was she tempted to take advantage of that trust.

Dr. Watson wrote the following about respondent:

Despite the hardships she has encountered in pursuing her career, Ms. Zander has kept her goal of working in the nursing field. She has demonstrated accountability and responsibility for all of her actions and has overcome difficult times. She is a responsible parent and wife and I am confident when she reenters the employment field she will be a responsible L.V.N. I have no concern over her character and moral stature. I would be eager to hire her again in our clinic setting and work with her in the hospital. I have no reservations of recommending her with the highest regard.⁶

26. Sherry Wilson, the Chief Nursing Officer for Mayers Memorial Hospital, wrote the following about respondent:

I am writing on behalf of Heather Zander. I have known Heather for approximately 8 years both professionally and personally. She is very responsible and dependable both in working ethics and her personal life. Although she has made some bad choices in her past she learned from her mistakes and has gotten back on track. She has only used this experience to learn and grow in a positive direction, hoping for the best outcomes. I again have no problem with employing her as a LVN to our facility, as I know she would be a very promising applicant. . . .

In previous correspondence, she wrote:

This Letter [sic] is in regards to Mrs. Heather Santos. I have known Heather personally and professionally for approximately eight years. Although she has experienced some troubling times in the past, she has

⁶ Dr. Watson also wrote a letter on respondent's behalf on August 16, 2008. In that letter, he expressed his excitement and eagerness to once again work with her once she completed her L.V.N. requirements.

grown into a very responsible adult. Currently, I being the Director of Nursing Services for Mayers Memorial hospital Skilled Nursing do have positions open for Licensed Nursing. I would be willing to hire Mrs. Santos and guide her through an extended orientation period and any probation period that might be required of her. Please feel free to contact me for any further questions or concerns regarding Mrs. Santos.

27. Lynn Blessing, R.N., respondent's former Clinical and Skills instructor at Lake College, wrote the following about respondent:

It is with pleasure that I tell you a little about Heather Santos. I was her clinical and skills lab instructor during her year-long education at Lake College in 2008. She maintained well above a 3.5 grade point average academically and also excelled in the clinical areas. She sought opportunities to learn new skills, and master old ones. She was a class leader, and respected by faculty [sic] and her peers. She did equally well in theory, skills lab, and clinical rotations. Her attendance was excellent, her attitude always positive.

Heather will provide very thorough [sic] compassionate care, and be a great asset to whatever hospital or clinic employs her. I have been told that she has been offered a job upon licensure. I believe it would be a great loss to the profession of nursing if Heather is not granted a LVN license.

I believe that any past poor choices Heather has made have been lessons and contributed to immense personal growth.

Heather plans to continue her education to registered nurse. I have no doubt that she will succeed because she has the tenacity, and especially the love of nursing to do so.

28. The Board has adopted criteria for evaluating the rehabilitation of an applicant for a license who has one or more criminal convictions. Those criteria which are relevant here are: 1) the nature and severity of the crimes; 2) actual or potential harm to the public; 3) overall criminal actions taken by any federal, state or local agency or court; 4) mitigation evidence; 5) compliance with the terms of any criminal probation imposed; 6) the amount of time that has passed since the offenses

occurred; 7) evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4; 8) cooperation with the Board and other law enforcement or regulatory agencies; and 9) other rehabilitation evidence. (Cal. Code Regs., tit. 16, § 2522(1), (2), (5), (8)-(13).)

29. Respondent has a troubled past involving a seven-year addiction to methamphetamine. She also drove drunk on two occasions, the most recent being New Year's Eve 2007. She will be on probation for that offense until May 2013. While her criminal behavior did little actual harm to the public other than damage to a telephone pole, the potential for harm was great.

30. But all of her drug offenses occurred between the ages of 19 and 26 years old (Factual Findings 3, 5, 7, 12, and 14), while she was in an abusive relationship or one in which her partner also abused methamphetamine (Factual Findings 16 and 17), and when she was single and had no children. Now, she's 34 years old, has terminated those relationships in which she used methamphetamine, has been married for almost one year, and is the mother of two boys and the stepmother of one girl. (Factual Findings 15-17.) There has not been a single relapse in the almost eight years since she last used methamphetamine. And while her last drunk driving conviction is more recent, the underlying arrest scared her into giving up all alcohol forever, and she has not consumed any alcohol in more than four years. (Factual Finding 18.) Her commitment to living a drug-free life is so strong that she refused all prescription-strength pain medication during the delivery of her two sons and took only non-prescription strength Tylenol.

31. Respondent has complied with all of the terms of probation imposed for each of her convictions, except that she is waiting for time to pass on her five-year probation term for her 2008 drunk driving conviction. The drug convictions described in Factual Findings 2 and 4 have been dismissed pursuant to Proposition 36. She is encouraged to explore the possibility of having the convictions described in Factual Findings 6, 8, 10, and 11 dismissed pursuant to Penal Code section 1203.4.

32. Respondent disclosed each of the convictions discussed above on her application. She also promptly responded to complainant's correspondence seeking additional information about those convictions. She was equally cooperative with the arresting officer on each of her arrests described above.

33. The Board's highest priority when exercising its licensing functions is protection of the public. (Bus. & Prof. Code, § 2841.1.) Here, the evidence discussed above clearly demonstrates that respondent has sufficiently rehabilitated herself such that she can perform the duties of a licensed vocational nurse in a manner that is consistent with the health, safety, and welfare of the public. Significantly, she has been drug and alcohol-free for more than seven and three years, respectively (Factual Findings 17 and 18); she has multiple support mechanisms in place to help her avoid relapse (Factual Findings 19-21); and she has an employer waiting for her

(respondent's) license to be issued and who is willing to personally supervise respondent during any probationary period imposed by the Board (Factual Finding 26).

34. However, the duties of a licensed vocational nurse are such that respondent cannot be impaired by alcohol or drugs while at work. Furthermore, she will be on criminal probation until May 2013 as a result of her 2008 drunk driving conviction. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a complete determination of one's rehabilitation requires a period of assessment during which she is not incarcerated, on probation, or on parole].) While a three-year probationary term as suggested by complainant at the hearing might be appropriate under different circumstances, the interest of public protection requires that her probationary term extend beyond that of her criminal probation. Therefore, a five-year term of probation, subject to the conditions specified in the Order below, is appropriate.⁷

LEGAL CONCLUSIONS

1. The Board may deny an application if the applicant has committed any of the acts specified in Business and Professions Code section 480, subdivision (a), as grounds for denial. (Bus. & Prof. Code, § 2866, subd. (d).) One such grounds for denial is having a criminal conviction. (Bus. & Prof. Code, § 480, subd. (a)(1).) Therefore, the convictions specified in Factual Findings 2, 4, 6, 8, 11, and 13, individually and collectively, constitute cause for denying respondent's license pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 2866, subdivision (d). Each of those convictions is substantially related to the qualifications, functions, or duties of a licentiate. (See, Cal. Code Regs., tit. 16, § 2521(f) [crime involving the consumption of a controlled substance is substantially related to the qualifications, functions, or duties of a licensed vocational nurse]; see also, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770 [discussing the substantial relationship between convictions involving the consumption of alcohol and the medical profession].)

2. Respondent's conviction for driving without a valid driver's license in violation of Vehicle Code section 12500 (Factual Finding 10) does not constitute cause for denying her application pursuant to Business and Professions Code sections

⁷ The board has adopted disciplinary guidelines it must consider in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 2524.) Those guidelines are supposed to include language limiting the length of probation for an initial license to no more than three years. (Bus. & Prof. Code, § 2878.9, subd. (e)(1).) But the current disciplinary guidelines contain no such language. And even if they did, the board may deviate from those guidelines when "the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation" (Cal. Code Regs., tit. 16, § 2524.)

480, subdivision (a)(1), or 2866, subdivision (d). The Board did not establish the existence of a substantial relationship between that conviction and the qualifications, functions, or duties of a licensed vocational nurse. (See, Cal. Code Regs., tit. 16, § 2521 [“... a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. . . .”]; see also, *Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358, 365-369 [affirming judgment issuing writ of mandate directing the Department of Motor Vehicles to set aside its order revoking salesperson’s license because the Department failed to establish a substantial relationship between child molestation and the qualifications, functions, or duties of a vehicle salesperson].)

3. Business and Professions Code section 480, subdivision (a)(3), allows the Board to deny an application if the applicant has committed any acts which would constitute grounds for suspending or revoking a license if committed by a licentiate. The Board may suspend or revoke a license if a licentiate has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a vocational nurse. (Bus. & Prof. Code, §§ 490, subd. (a); 2878, subd. (f).) Therefore, the convictions specified in Factual Findings 2, 4, 6, 8, 11, and 13, individually and collectively, constitute cause for denying respondent’s license pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 2866, subdivision (d), as those statutes relate to Business and Professions Code sections 490, subdivision (a), and 2878, subdivision (f), individually and collectively. For the reasons discussed in Legal Conclusion 1, each conviction is substantially related to the qualifications, functions, or duties of a licensed vocational nurse.

4. For the reasons described in Legal Conclusion 2, respondent’s conviction for driving without a valid driver’s license in violation of Vehicle Code section 12500 (Factual Finding 10) does not constitute cause for denying her application pursuant to Business and Professions Code sections 480, subdivision (a)(3), or 2866, subdivision (d), as those statutes relate to Business and Professions Code sections 490, subdivision (a), and 2878, subdivision (f).

5. The Board may suspend or revoke a license also if the licentiate has engaged in “unprofessional conduct.” (Bus. & Prof. Code, § 2878, subd. (a).) The possession of a controlled substance in violation of the law constitutes unprofessional conduct. (Bus. & Prof. Code, § 2878.5, subd. (a).) Methamphetamine is a controlled substance. (Bus. & Prof. Code, § 11055, subd. (d)(2).) It is illegal to possess methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Therefore, the convictions for possession of methamphetamine described in Factual Findings 2 and 4, individually and collectively, constitute cause for denying respondent’s application pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 2866,

subdivision (d), as those statutes relate to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (a).⁸

6. “Unprofessional conduct” also includes the use of a controlled substance or an alcoholic beverage to the extent or in a manner that is dangerous or injurious to the licentiate, another person, or the public. (Bus. & Prof. Code, § 2878.5, subd. (b).) The convictions discussed in Factual Findings 2, 4, 8, and 13, individually and collectively, constitute cause for denying respondent’s application pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 2866, subdivision (d), as those statutes relate to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (b).

7. “Unprofessional conduct” also includes being convicted of any criminal offense involving the possession or use of a controlled substance or alcoholic beverage. (Bus. & Prof. Code, § 2878.5, subd. (c).) The convictions discussed in Factual Findings 2, 4, 8, and 13, individually and collectively, constitute cause for denying respondent’s application pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 2866, subdivision (d), as those statutes relate to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (c).

8. The above evidence demonstrates that cause exists for denying respondent’s application for a vocational nurse license for the reasons explained in Legal Conclusions 1, 3, and 5 through 7, jointly and severally. But as discussed in Factual Findings 33 and 34, respondent has established that she can practice vocational nursing in a manner consistent with the health, safety, and welfare of the public if she is issued a probationary license subject to the conditions specified in the Order below.

ORDER

Respondent Heather Renee Santos’ application for a vocational nurse license is hereby GRANTED. A license shall be issued to respondent. Said license shall be immediately REVOKED, the order of revocation STAYED, and the license placed on PROBATION for a period of five years on the following conditions:

⁸ See, Evidence Code section 452.5, subdivision (b) [a certified copy of an official record of the conviction is admissible to prove “the commission . . . of [the] criminal offense . . . recorded by the record”]; see also, *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 [Evid. Code, § 452.5, subd. (b) creates a hearsay exception which allows for the admission of a qualified court record to not only prove the fact of conviction but also that the offense reflected in the record actually occurred].

1. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of this Decision, unless the Board determines that fingerprints were previously submitted by respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of this Decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM. Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of the Probation Program, respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS. Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF CHANGE IN ADDRESS OR TELEPHONE NUMBER. Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE. Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period she resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVES. Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYERS. When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of her license. This notification to respondent's current health care employer shall occur no later than the effective date of this Decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Statement of Decision and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS.

Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS. Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to the respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S). Respondent, at her own expense, shall enroll in and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE. Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's Decision.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. **LICENSE SURRENDER.** During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

13. **VIOLATION OF PROBATION.** If respondent violates the conditions of her probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of respondent's license. If during probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

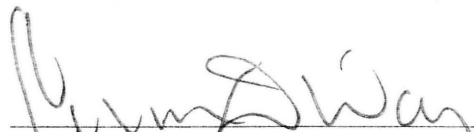
14. **CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS.** Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

15. ABSTAIN FROM CONTROLLED SUBSTANCES. Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

16. ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL. Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

17. SUBMIT BIOLOGICAL FLUID SAMPLES. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and respondent's current employer.

DATED: May 13, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. VN-2008-1336

12 **HEATHER RENEE SANTOS**
13 **P.O. Box 741**
Burney, CA 96013

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Statement of
19 Issues solely in her official capacity as the Executive Officer of the Board of Vocational Nursing
20 and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

21 2. On or about October 24, 2008, the Board received an application for a vocational
22 nurse license from Heather Renee Santos ("Respondent"). On or about October 13, 2008,
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on March 23, 2010.

25 **STATUTORY AND REGULATORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 2866 provides, in pertinent part, that
27 the Board may deny a license when it finds that the applicant has committed any acts constituting
28 grounds for denial of licensure under section 480 of that Code.

1 4. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that
3 the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action which a board is permitted to take following the
7 establishment of a conviction may be taken when the time for appeal has elapsed, or
8 the judgment of conviction has been affirmed on appeal, or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a subsequent
10 order under the provisions of Section 1203.4 of the Penal Code.

11

12 (3)(A) Done any act that if done by a licentiate of the business or
13 profession in question, would be grounds for suspension or revocation of license.

14 (B) The board may deny a license pursuant to this subdivision only if the
15 crime or act is substantially related to the qualifications, functions, or duties of the
16 business or profession for which application is made . . .

17 5. Code section 2878 states, in pertinent part:

18 The Board may suspend or revoke a license issued under this chapter [the
19 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the
20 following:

21 (a) Unprofessional conduct . . .

22

23 (f) Conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensed vocational nurse, in which event the record of the
25 conviction shall be conclusive evidence of the conviction . . .

26 6. Code section 2878.5 states, in pertinent part:

27 In addition to other acts constituting unprofessional conduct within the
28 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist or podiatrist administer to
himself or herself or furnish or administer to another, any controlled substance as
defined in Division 10 of the Health and Safety Code, or any dangerous drug as
defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 of the Health
and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or herself,
any other person, or the public, or to the extent that the use impairs his or her ability
to conduct with safety to the public the practice authorized by his or her license.

///

1 (c) Be convicted of a criminal offense involving possession of any
2 narcotic or dangerous drug, or the prescription, consumption, or self administration of
any of the substances described in subdivisions (a) and (b) of this section, in which
event the record of the conviction is conclusive evidence thereof . . .

3 7. Code section 2878.6 states:

4 A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere made to a charge substantially related to the qualifications, functions and
6 duties of a licensed vocational nurse is deemed to be a conviction within the meaning
7 of this article. The board may order the license suspended or revoked, or may decline
8 to issue a license, when the time for appeal has elapsed, or the judgment of conviction
9 has been affirmed on appeal or when an order granting probation is made suspending
the imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty
and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
the accusation, information or indictment.

10 8. Code section 490, subdivision (a), states:

11 In addition to any other action that a board is permitted to take against a
12 licensee, a board may suspend or revoke a license on the ground that the licensee has
13 been convicted of a crime, if the crime is substantially related to the qualifications,
functions, or duties of the business or profession for which the license was issued.

14 9. California Code of Regulations, title 16, section 2521, states, in pertinent part:

15 For the purposes of denial, suspension, or revocation of a license pursuant
16 to Division 1.5 (commencing with Section 475) of the Business and Professions
17 Code, a crime or act shall be considered to be substantially related to the
18 qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
perform the functions authorized by his license in a manner consistent with the public
health, safety, or welfare . . .

19 COST RECOVERY

20 10. Code section 125.3 provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 CONTROLLED SUBSTANCE AT ISSUE

25 11. "Methamphetamine" is a Schedule II controlled substance as designated by Health
26 and Safety Code section 11055(d)(2).

27 ///

28 ///

1 **FIRST CAUSE FOR DENIAL**

2 **(Criminal Convictions)**

3 12. Respondent's application is subject to denial pursuant to Code sections 2866, 480,
4 subdivision (a)(1), and 480, subdivision (a)(3)(A), in that Respondent was convicted of crimes
5 which are substantially related to the qualifications, functions, and duties of a licensed vocational
6 nurse. Respondent's convictions would constitute cause for discipline against her pursuant to
7 Code sections 2878, subdivision (f), and 490, subdivision (a), were she a licentiate of the Board.

8 a. In or about December 1999, in the criminal proceeding titled *People v. Heather*
9 *Renee Santos* (Super/Muni Ct. Shasta County, 1999, Case No. CRM 970008125), Respondent
10 pled guilty to violating Health and Safety Code sections 11377, subdivision (a) (possession of a
11 controlled substance, a misdemeanor) and 11550, subdivision (a) (using/being under the influence
12 of a controlled substance, a misdemeanor). The circumstances of the crimes are as follows: On
13 or about November 7, 1997, officers with the Redding Police Department (hereinafter "RPD")
14 responded to a report of a suspicious circumstance at a private residence (apartment). Upon
15 arrival, the officers contacted three females, including Respondent. While speaking with the
16 three females, the officers observed that they were seemingly paranoid with objective symptoms
17 of being under the influence of a controlled substance. The officers located various paraphernalia
18 in plain view in the apartment, including a methamphetamine pipe and a clear plastic heat-sealed
19 bindle containing a white powdery residue. Respondent admitted that the items were hers and
20 gave the officers a bindle containing three rocks of methamphetamine which she had taken out of
21 her pants pocket. Upon further questioning, Respondent stated that she had been using
22 methamphetamine since she was 19 years old (Respondent was 20 at the time of the incident),
23 that she had been using methamphetamine approximately three to four times a day recently, and
24 that she last used methamphetamine on November 6, 1997, while alone in her apartment.

25 b. On or about December 14, 1999, in the criminal proceeding titled *People v. Heather*
26 *Renee Santos* (Super/Muni Ct. Shasta County, 1999, Case No. MCRDCRF 990008705),
27 Respondent pled guilty to violating Health and Safety Code section 11377 subdivision (a)
28 (possession of a controlled substance, a misdemeanor). The circumstances of the crime are as

1 follows: On or about October 20, 1999, Respondent told an officer with the RPD during a routine
2 traffic stop that she was on probation for drug related offenses. The officer asked Respondent if
3 she had any contraband in her vehicle. Respondent initially denied that she had any contraband,
4 but later admitted that she had methamphetamine. Respondent retrieved a nylon bag from her
5 vehicle and told the officer that she was addicted to methamphetamine and needed help. The
6 officer opened the nylon bag and located a small scale, two glass smoking pipes, a waterproof
7 match container with two plastic baggies containing methamphetamine, several razor blades, and
8 a small knife. Respondent advised the officer that there was another scale in her purse. The
9 officer checked Respondent's purse and found a larger, digital-type scale and several sheets of
10 paper which appeared to be "pay/owe sheets" (commonly used by narcotics dealers to keep track
11 of narcotics and money transferred during drug transactions). Later, Respondent admitted that the
12 narcotics were hers and that she was currently in a drug diversion class, but had started using
13 methamphetamine again.

14 c. On or about March 10, 2000, in the criminal proceeding titled *People v. Heather*
15 *Renee Santos* (Super. Ct. Shasta County, 2000, Case No. MCRDCRM 0000113), Respondent
16 pled guilty to violating Health and Safety Code section 11364 (possession of injecting/smoking
17 device, a misdemeanor). The circumstances of the crime are as follows: On or about November
18 26, 1999, an officer with the RPD observed Respondent using a payphone at a known drug
19 use/transaction area. The officer stopped Respondent and asked her if she was on probation.
20 Respondent stated that she was "out on O/R" (released on her own recognizance) for a charge of
21 possession of a controlled substance. The officer asked Respondent if she had anything illegal
22 with her and she gave the officer a glass smoking pipe that was on her person.

23 d. On or about March 10, 2000, in the criminal proceeding titled *People v. Heather*
24 *Renee Santos* (Super. Ct. Shasta County, 2000, Case No. MCRDCRTR0001685), Respondent
25 pled guilty to violating Vehicle Code section 23152, subdivision (b) (driving while having a
26 blood alcohol level of 0.08% or higher, a misdemeanor). The circumstances of the crime are as
27 follows: On or about January 29, 2000, at approximately 0217 hours, officers with the RPD were
28 dispatched to the area of Larkspur Lane and Remor in reference to a single vehicle collision. The

1 officers noticed a large telephone pole from the right shoulder of Larkspur Lane with fresh
2 damage on it and a Toyota with major damage to the right front side. Paramedics were already on
3 scene and were removing Respondent from the vehicle. The officers were contacted by another
4 officer, Corporal M., who stated that he had stopped Respondent at approximately 2300 hours on
5 January 28, 2000, in front of the Bert and Ernie's Bar located on Industrial Street, which was 2
6 blocks from the area of the traffic collision. Respondent was not intoxicated at that time, but was
7 cited and released on a warrant. Witnesses observed Respondent go into the bar after she was
8 released. Two witnesses, who were standing on the sidewalk, reported to the three officers that
9 they had observed Respondent driving her vehicle at a high rate of speed. The two witnesses lost
10 sight of Respondent's vehicle, but immediately heard a loud collision. Later, Respondent was
11 taken to the hospital where she was found to have a blood alcohol level of .12%.

12 e. On or about November 13, 2000, in the criminal proceeding titled *People v. Heather*
13 *Renee Santos* (Super. Ct. Shasta County, 2000, Case No. MCRDCRTR 0008987), Respondent
14 pled guilty to violating Vehicle Code section 12500 (driving a vehicle without a license).

15 f. On or about October 10, 2003, in the criminal proceeding titled *People v. Heather*
16 *Renee Santos* (Super. Ct. Shasta County, 2003, Case No. MCBRCRM 0306300), Respondent
17 pled guilty to violating Health and Safety Code section 11364 (possession of injecting/smoking
18 device, a misdemeanor). The circumstances of the crime are as follows: On or about August 12,
19 2003, officers with the Shasta Interagency Narcotic Task Force, assisted by special agents of the
20 Department of Justice, detectives of the Shasta County Sheriff's Office, and officers with the RPD
21 served a search warrant at a private residence in Redding, California, and seized glass
22 methamphetamine pipes with white residue (suspected methamphetamine), syringes, .45 caliber
23 round ammunition, pay-owes, a billy club, an operational digital gram scale, one crossbow, and a
24 surveillance camera. Respondent arrived at the residence during the service of the search warrant
25 and was found in possession of a glass methamphetamine pipe.

26 g. On or about May 2, 2008, in the criminal proceeding titled *People v. Heather Renee*
27 *Santos* (Super. Ct. Shasta County, 2008, Case No. MCBRCRTR 08000998), Respondent was
28 convicted by the court on her plea of nolo contendere to violating Vehicle Code section 23152,

1 subdivision (b) (driving while having a blood alcohol level of 0.08% or higher, a misdemeanor).
2 Respondent was also charged with violating Penal Code section 273a, subdivision (b) (child
3 endangerment), but that charge was dismissed in view of Respondent's plea as above. The
4 circumstances of the crime are as follows: On or about December 31, 2007, an officer with the
5 California Highway Patrol observed a Jeep Cherokee, driven by Respondent, traveling at an
6 estimated speed of 35 miles per hour in a posted zone of 25 miles per hour. As Respondent's
7 vehicle passed his location, the officer observed the vehicle travel over the fog line and on to the
8 asphalt shoulder approximately one foot as it negotiated a left hand turn in the roadway. The
9 vehicle was heading for a telephone pole, but swerved abruptly back on the dirt shoulder. The
10 officer made an enforcement stop on the vehicle and made contact with Respondent. Respondent
11 had her three year old son in the vehicle. Later, based on his observations of Respondent's poor
12 driving, objective symptoms of alcohol intoxication, and poor performance on field sobriety tests,
13 the officer determined that Respondent was under the influence of an alcoholic beverage and was
14 unable to safely operate her vehicle.

15 **SECOND CAUSE FOR DENIAL**

16 **(Possession of a Controlled Substance)**

17 13. Respondent's application is subject to denial pursuant to Code sections 2866 and 480,
18 subdivision (a)(3)(A), in that on or about November 7, 1997, and October 20, 1999, Respondent
19 possessed the controlled substance methamphetamine without lawful authority; therefore, as
20 set forth in subparagraphs 12(a) and (b). Respondent's acts would constitute cause for
21 discipline against her pursuant to Code sections 2878, subdivision (a), and 2878.5, subdivision
22 (a), were she a licentiate of the Board.

23 **THIRD CAUSE FOR DENIAL**

24 **(Use of Controlled Substances and Alcoholic Beverages to an Extent** 25 **or in a Manner Dangerous or Injurious to Oneself and Others)**

26 14. Respondent's application is subject to denial pursuant to Code sections 2866 and 480,
27 subdivision (a)(3)(A), in that on or about November 6, 1997, October 20, 1999, January 29, 2000,
28 and December 31, 2007, Respondent used the controlled substance methamphetamine and

1 alcoholic beverages to an extent or in a manner dangerous or injurious to herself and others, as set
2 forth in subparagraphs 12 (a), (b), (d), and (g) . Respondent's acts would constitute cause
3 for discipline against her pursuant to Code sections 2878, subdivision (a), and 2878.5, subdivision
4 (b), were she a licentiate of the Board.

5 **FOURTH CAUSE FOR DENIAL**

6 **(Criminal Convictions Involving Possession and Use of**

7 **Controlled Substances and Consumption of Alcoholic Beverages)**

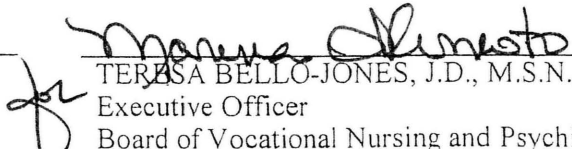
8 15. Respondent's application is subject to denial pursuant to Code sections 2866 and 480,
9 subdivision (a)(3)(A), in that on or about December 1999, December 14, 1999, March 10, 2000,
10 and May 2, 2008, Respondent was convicted of criminal offenses involving the possession and
11 use of the controlled substance methamphetamine and consumption of alcoholic beverages, as set
12 forth in subparagraphs 12 (a), (b), (d), and (g) . Respondent's acts would constitute cause
13 for discipline against her pursuant to Code sections 2878, subdivision (a), and 2878.5, subdivision
14 (c), were she a licentiate of the Board.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
18 issue a decision:

- 19 1. Denying the application of Heather Renee Santos for a vocational nurse license;
20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: August 24, 2010.

23 
TERESA BELLO-JONES, J.D., M.S.N., R.N.
24 Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
25 State of California
Complainant

26
27
28 SA2010101594
10587573.doc